

J.L.C. asks the Utah Labor Commission to review Administrative Law Judge Marlowe's decision regarding Mr. C.'s claim for benefits under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Annotated).

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12 and Utah Code Ann. §34A-2-801(3).

BACKGROUND AND ISSUE PRESENTED

On October 14, 2003, Mr. C. injured his left hand while working for St. George Steel. St. George Steel and its workers' compensation insurance carrier, Specialty Risk Services (referred to jointly as "St. George Steel") accepted liability under the Utah Workers' Compensation Act for Mr. C.'s injuries. However, Mr. C. and St. George Steel disagreed on the extent of permanent disability caused by the injury.

On August 20, 2004, Mr. C. filed an application for hearing asking the Commission to order St. George Steel to pay additional permanent partial disability compensation. St. George Steel filed its answer disputing Mr. C.'s claim and then, on September 28, 2004, filed a motion for summary judgment.

In a decision issued on January 19, 2005, Judge Marlowe declined to accept either party's position regarding the amount of permanent partial disability compensation due Mr. C.. Instead Judge Marlowe concluded that the undisputed facts established Mr. C. had suffered a 13% permanent impairment to his left hand and was entitled to 21.84 weeks of disability compensation.

On February 18, 2005, Mr. C. filed a motion for Commission review of Judge Marlowe's decision. In his motion for review, Mr. C. contends that the evidence establishes he suffered a 13% whole person impairment, rather than a 13% impairment to his left hand.

DISCUSSION

In moving for summary judgment in this matter, St. George Steel asserted that Mr. C.'s injury was limited to the loss of two fingers of his left hand and, as such, the extent of Mr. C.'s permanent partial disability could be determined by reference to § 34A-2-412(4)'s schedule of compensation for loss of various body parts. Judge Marlowe rejected this basis for St. George Steel's motion for summary judgment, but then proceeded to summarily disposed of Mr. C.'s claim by concluding he was entitled to compensation for a 13% permanent impairment to his left hand.

Mr. C. challenges Judge Marlowe's decision on the grounds he is entitled to compensation for a 13% whole person impairment, rather than a 13% impairment of his hand. In reviewing this matter, the Commission notes that although Judge Marlowe denied St. George Steel's motion for summary judgment, she then entered summary judgment on her own motion. Because Judge Marlowe ruled without giving the parties an opportunity for an evidentiary hearing, her judgment can be upheld only if there is no dispute as to material facts and the judgment is correct as a matter of law. Furthermore, the evidence must be viewed in the light most favorable to Mr. C..

The only medical evidence regarding the extent of Mr. C.'s work-related permanent impairment comes from Mr. Bennett and Dr. Root. Mr. Bennett, a physical therapist, performed various measurements on Mr. C.'s left hand and arm. In Mr. Bennett's opinion, Mr. C. suffered a 13% impairment of his left hand from the loss of his fingers, plus an additional 8% impairment for loss of strength. According to Mr. Bennett, these two impairments, added together, resulted in a 13% whole person impairment. Dr. Root apparently concurred with Mr. Bennett's evaluation of Mr. C. and likewise concluded that Mr. C. had suffered a 13% whole person impairment.

Instead of viewing the evidence in the light most favorable to Mr. C., Judge Marlowe focused only that part of Mr. Bennett's evaluation that found a 13% impairment of Mr. C.'s hand. Judge Marlowe disregarded the other part of Mr. Bennett's opinion that Mr. C. had a 13% whole person impairment. While this selective weighing of the evidence might be permissible after an evidentiary hearing, it is impermissible on summary judgment. The Commission therefore concludes that Judge Marlowe's summary disposition of Mr. C.'s claim was in error.

ORDER

The Commission sets aside Judge Marlowe's decision of January 19, 2005, and remands this matter to the Adjudication Division for further proceedings necessary to resolve Mr. C.'s claim. It is so ordered.

Dated this 29th day of July, 2005.

R. Lee Ellertson

Utah Labor Commissioner